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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Sections of the)	MM Docket No. 92-266
Cable Television Consumer Protection)	
and Competition Act of 1992)	
)	
Rate Regulation)	

COMMENTS OF LIBERTY MEDIA CORPORATION
ON PETITIONS FOR RECONSIDERATION

Liberty Media Corporation ("Liberty Media") submits these comments in response to the petitions for reconsideration of the Commission's Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking in this proceeding.¹ Although the Petitions reinforce the need for prompt and substantial modification of the Commission's "going forward" rules, Liberty Media respectfully suggests that the Commission address these issues in the context of the Fifth Notice. However, the Commission should declare now that any rule modification adopted in that

¹ Petitions for Reconsideration were filed by Eternal Word Television Network ("EWTN"), Viacom International, Inc. ("Viacom"), United Video, and the National Association of Telecommunications Officers and Advisors ("NATOA"). Major League Baseball ("MLB") filed a "Petition for Clarification or Partial Reconsideration" and Dr. Everett C. Parker and Henry Geller (the "Public Interest Petitioners") filed a Petition for Expedited Reconsideration. "Comments" on the Fourth Report and Order ("Fourth Report") were filed by Ovation Inc. and PBS Horizons Cable Network (the "Program Providers") and by Times Mirror Company ("TM"). For convenience, Liberty Media refers to the above filings collectively as the "Petitions."

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proceeding will be retroactive to the effective date of the Fourth Report at the option of the cable operator in order to ameliorate the stifling impact of the current uncertainty on ongoing carriage negotiations.

With the exception of NATOA, each of the petitioners argues that the current method for adjusting regulated rates to account for the addition of new programming services to regulated tiers provides inadequate or inequitable incentives for cable operators to add new services. The petitioners generally contend that the 7.5 percent mark-up on programming costs and the "per channel adjustment" or "network cost adjustment" permitted under the current rules are insufficient to overcome other significant regulatory disincentives for cable operators to add new programming services. See, e.g., MLB Petition at 2; United Video Petition at 8-9; Viacom Petition at 2-6; Public Interest Petitioners Petition at 8-13; and Programming Providers Petition at 8-19.

Among other things, the current rules create substantial uncertainty as to when a cable operator adding a new programming service to a regulated tier will recover the cost of the new programming and subject the cable operator's entire rate structure to the complaint process for a 45 day period following any rate increase to add a new programming service. See United Video Petition at 2-4; Programming Providers Petition at 13-19; Public Interest Petitioners Petition at 12-15. Under these circumstances, the 7.5 percent mark-up on pro-

gramming costs -- which is even substantially less than the 11.25 percent return on other costs established in the cost of service proceeding -- and a network cost adjustment of one or two cents per subscriber provide insufficient incentives for cable operators to add new services to regulated tiers. Id.

In addition to providing inadequate incentives, several petitioners argue that the current going forward rules also are inequitable and will skew carriage decisions by cable operators in favor of more expensive programming services. See, e.g., EWTN Petition at 2-4; TM Petition at 3-5; Public Interest Petitioners Petition at 12; Programming Providers Petition at 11-13. These petitioners contend that, because the existing rules determine the cable operator's return as a percentage of the cost of the new programming service, the rules provide no real incentive for cable operators to add new programming services which charge little or no license fee. To remedy this problem, petitioners have proposed the following alternatives: (a) a "flat fee" mark-up, either as a replacement for or an alternative to the percentage-based mark-up (see TM Petition at 5; EWTN Petition at 5-6; Programming Providers Petition at 11-13); (b) a "sliding scale" fee in which the percentage mark-up would increase as the cost of the new programming service decreases (see TM Petition at 5); or (c) an "average cost" fee in which the mark-up for programming services charging little or no license

fee would be based on the average cost of all other programming services on the same tier (see EWTN Petition at 5).

Liberty Media agrees that the current going forward rules must be modified to provide adequate incentives for cable operators to add new programming services to regulated tiers and supports the Commission's efforts to expedite consideration of these issues. However, Liberty Media did not seek reconsideration of the going forward rules because the Commission specifically requested further comment in the Fifth Notice at ¶256 on "whether our going forward methodology should be modified...[to] better meet our goals of encouraging infrastructure development and growth of programming."

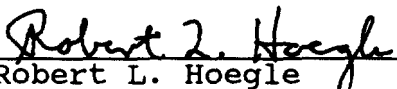
Under these circumstances, Liberty Media respectfully suggests that the Commission consider the issues raised in the above petitions for reconsideration in the context of the rulemaking proceeding initiated pursuant to the Fifth Notice. This approach will allow all parties an opportunity to comment on the existing rules and will not significantly delay consideration of these issues by the Commission. Although uncertainty over the going forward rules effectively has frozen carriage negotiations, the Commission could remedy this problem during the pendency of the rulemaking proceeding by clarifying that any modification of the going forward rules pursuant to the Fifth Notice will be made retroactive to the effective date of the Fourth Report at the option of the cable operator.

Conclusion

Petitioners have identified significant problems with the Commission's current going forward rules. The Commission should address these "going forward" issues in the rulemaking proceeding initiated pursuant to the Fifth Notice and declare now that any rule modification adopted in that proceeding may be retroactive to the effective date of the Fourth Report.

June 16, 1994

Respectfully submitted,


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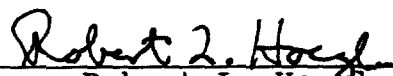
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